

EXHIBIT

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FILED

SEP 16 2008

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOISCLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS  
EAST ST. LOUIS OFFICE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHEMETCO, INC.,

Defendant.

Civil Nos. 00-670-DRH

00-677-DRH (consolidated)

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PEOPLE OF THE STATE OF

ILLINOIS, *ex rel.* LISA MADIGAN,

ATTORNEY GENERAL OF THE STATE

OF ILLINOIS,

Plaintiff,

Hon. David R. Herndon

U.S. District Judge

Magistrate Judge Donald G. Wilkerson

v.

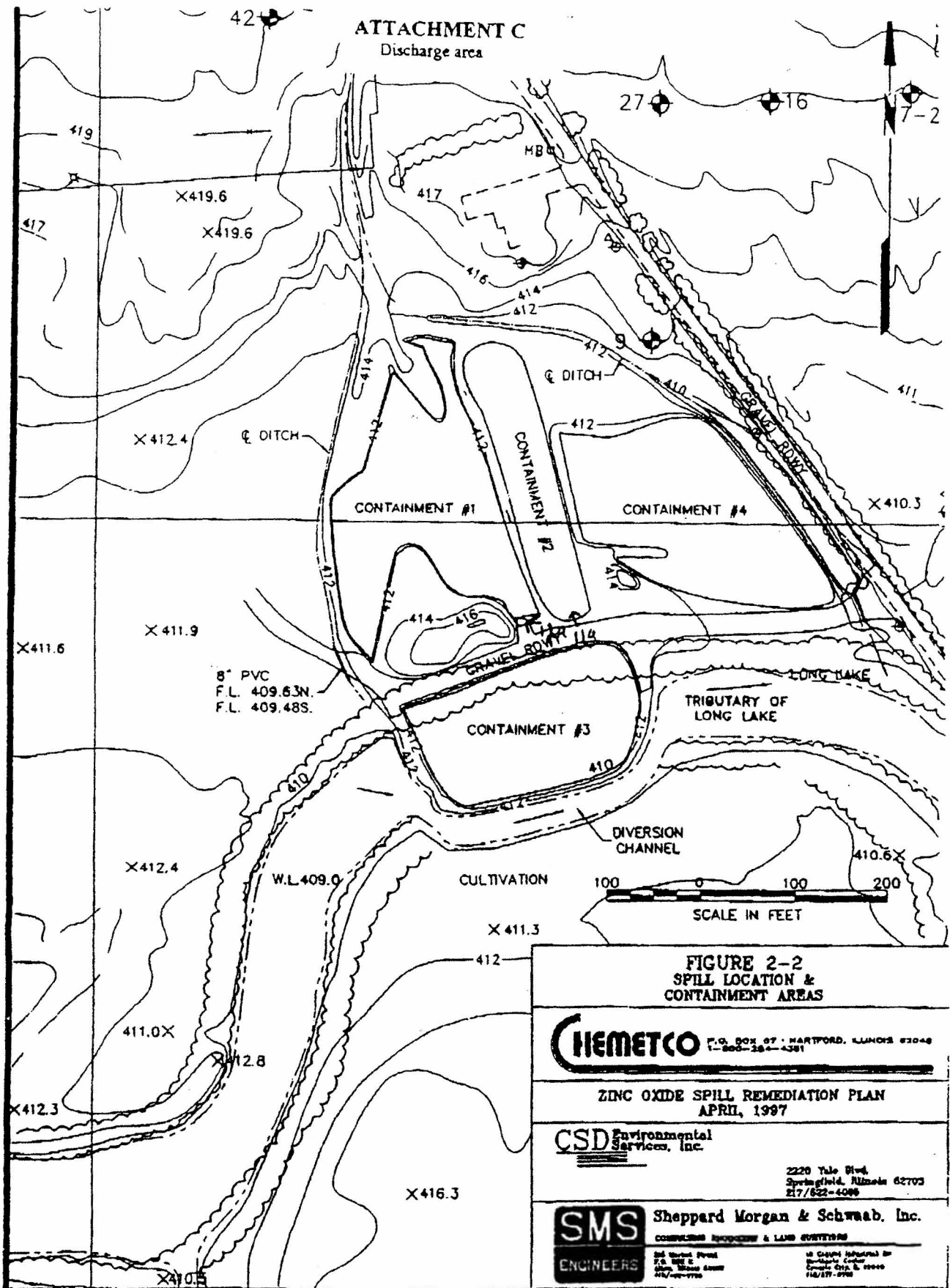
CHEMETCO, INC.,

Defendant.

INTERIM ORDERI. BACKGROUND

**WHEREAS**, Plaintiff United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), filed a Complaint in this Court against Chemetco, Inc. ("Chemetco" or "Defendant"), seeking injunctive relief and civil penalties for alleged civil violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 *et seq.*, that occurred at Chemetco's secondary copper smelting facility in Hartford, Illinois ("Chemetco Facility").

**WHEREAS**, Plaintiff, People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois ("State of Illinois" or "State"), contemporaneous with the filing of the United States' Complaint, filed a Complaint in this Court against Chemetco, Inc. pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, seeking, among other things: (1) reimbursement of costs incurred and to be incurred by the State of Illinois in responding to the release and/or threatened release of Hazardous Substances at the



Chemetco Facility; and (2) a declaratory judgment, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), on Chemetco's liability for future response costs associated with the Chemetco Facility. The State's Complaint also seeks injunctive relief and civil penalties for alleged violations of the Illinois Environmental Protection Act, 415 ILCS 5/1, *et seq.*, (2002) ("State Act"), at the Chemetco Facility. On October 16, 2001, the United States' Complaint and the State's Complaint were consolidated for purposes of discovery and trial.

**WHEREAS**, on November 13, 2001, Chemetco filed a voluntary petition under Chapter 7 of the Bankruptcy Code. *See In re Chemetco*, No. 01-34066 (Bankr. S.D. Ill.) ("the Bankruptcy Case"). Laura K. Grandy was appointed Trustee to take control of the bankruptcy estate ("Estate") and has proceeded with the liquidation of Chemetco, Inc.

**WHEREAS**, the Trustee disputes many of the contentions and allegations of the State of Illinois in its Complaint.

**WHEREAS**, the State and the Trustee recognize that mismanagement of the Facility by the previous owners and operators of the Chemetco Facility resulted in conditions that may pose a threat or threats to the public health or welfare or the environment.

**WHEREAS**, the State acknowledges that the Trustee has expended considerable Estate funds to maintain and preserve the Facility and to prevent further releases to the environment.

**WHEREAS**, the Trustee has identified on-site Work ("Work") to be undertaken by the Trustee as an alternative to the injunctive relief sought in the Complaints which, if feasible, will allow for recovery of value from certain materials accumulated at the Chemetco Facility.

**WHEREAS**, all Work conducted under this Interim Order shall be conducted consistent with the terms and conditions of Work Plans to be proposed by the Trustee and approved by the State.

**WHEREAS** the Trustee developed the Work to be implemented under this Interim Order in an effort to continue the liquidation of Facility Assets and move the Chemetco Facility toward compliance

with the applicable environmental laws. The work to be performed under this Interim Order will be undertaken within the framework of the State's authorities under CERCLA, Section 22.2(f)-(k) of the Illinois Environmental Protection Act ("State Act"), 415 ILCS 5/22.2(f)-(k), and other applicable or relevant and appropriate requirements ("ARARs").

**WHEREAS**, the State and/or U.S. EPA may undertake additional response actions at the Chemetco Facility pursuant to various environmental statutes, including but not limited to CERCLA Sections 106 and 107, 42 §§ 9606 and 9607, and Section 22.2(f)-(k) of State Act, 45 ILCS 5/22.2(f)-(k), the costs of which will not be the responsibility of the Trustee.

**WHEREAS**, the State and the Trustee recognize, and the Court by entering this Interim Order finds, that this Interim Order has been negotiated by the State and the Trustee in good faith and that implementation of this Interim Order will expedite the cleanup of the Chemetco Facility, avoid unnecessary depletion of Chemetco's assets, and avoid prolonged and complicated litigation between the State and the Trustee, and that this Interim Order is fair, reasonable, and in the public interest.

**NOW, THEREFORE**, it is hereby Ordered:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to CERCLA Sections 107 and 113(b), 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1367. This Court also has been vested with personal jurisdiction over Chemetco and the Estate, and that jurisdiction now extends to the Trustee. As representative of Chemetco, Inc. and the Estate, the Trustee has the authority to compromise claims against Chemetco, subject to approval of the Bankruptcy Court. Pursuant to that authority, the Trustee acknowledges that Chemetco, Inc. and the Estate have no objections or defenses to the jurisdiction of this Court or to venue in this District or to this Court's jurisdiction to enter and enforce this Interim Order.

2. This Interim Order and its appendices constitute an interim agreement and understanding

between the State and the Trustee as of the date of its execution. The State and the Trustee acknowledge that this Interim Order requires the Trustee to develop and submit, for approval by the State and to comply with, various Work Plans. The State and the Trustee further acknowledge that there are no representations, agreements or understandings relating to this Order other than those expressly contained in this Interim Order. This Order does not address the disposition of the Slag or Scrubber Sludge at the Facility. The State and the Trustee further anticipate doing so through a subsequent negotiated order with the participation of the U.S. EPA and the U.S. Department of Justice when the approval of a processor and the manner of processing of those materials is sought and obtained.

### **III. APPLICABILITY**

3. a. This Interim Order applies to and is binding upon the State, the Trustee, and the Trustee's successors and assigns, the Estate and the Estate's successors and assigns, and Chemetco, Inc.

b. The requirements of this Interim Order, including the requirement to properly manage the Facility Assets, and to provide or secure access pursuant to Section IX shall be binding upon the Trustee, the Estate, Chemetco, and any and all persons who subsequently acquire any interest in or a portion of the Facility. Sale or lease of the Facility or any part or interest thereof shall not interfere with the State's Response Actions at the Facility.

### **IV. DEFINITIONS**

4. Unless otherwise expressly provided herein, terms used in this Interim Order which are defined in the State Act, RCRA, CERCLA, or in regulations promulgated under those statutes shall have the meaning assigned to them in those statutes or in such regulations. Whenever terms listed below are used in this Interim Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

**ARAR or ARARs** shall mean:

a. Applicable Requirements consisting of those cleanup standards, standards

of control, and other substantive requirements, criteria, or limitations promulgated under federal environmental or state environmental laws or regulations that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance found at a CERCLA site; or

b. Relevant and Appropriate Requirements consisting of those cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under federal environmental or state environmental or facility siting laws that, while not applicable to a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site, address problems or situations sufficiently similar to those encountered at Chemetco Facility that their use is well suited to this particular site.

c. A list of possible ARARs is provided in Appendix A of this Interim Order. Additionally, ARARs shall be proposed by the Trustee in Work Plans submitted for approval under this Interim Order.

**Bankruptcy Case** shall mean the proceeding initiated by the voluntary petition for Chapter 7 liquidation filed by Chemetco, Inc., and captioned *In re Chemetco, Inc.*, No. 01-34066 (Bankr. S.D. Ill.).

**Bankruptcy Court** shall mean the United States Bankruptcy Court for the Southern District of Illinois sitting in East St. Louis, Illinois.

**CERCLA** shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*

**Chemetco** or **Chemetco, Inc.**, shall mean the company or corporation that previously owned and operated the copper smelting equipment and operation at the Chemetco Facility in Hartford, Illinois.

**Interim Order** shall mean this Interim Order and all appendices attached hereto. In the event of conflict between this Interim Order and any appendix, this Interim Order shall control.

**Day** shall mean a calendar day unless expressly stated to be a Working Day.

**Estate** shall mean the bankruptcy estate of Chemetco, Inc., a debtor.

**Facility** or **Chemetco Facility** shall mean the former Chemetco Smelter and real property consisting of Parcel Nos. 004 (18.19 acres), 007 (1.02 acres), 008 (9.98 acres), 009 (0.5 acres), 010 (11.9 acres), 011 (41.1 acres), 013.001 (10.25 acres), 016.001 (4.33 acres), 017.001 (45.97 acres), 018 (21.43 acres), 020(1acre), 021 (50.1 acres), 022 (58.27 acres), 026 (73.43 acres), and 027 (1 acre), as shown on the property map attached as Appendix B. Subparcels 004(a), located south of New Poag Road, and 026(a) and (b), located west of the current location of Old Alton Road, and all of Parcels 008, 009, 010, 011, 013.001, 016.001, 017.001, and 018 are subject to Illinois EPA's December 4, 2001, Seal Order (attached hereto as Appendix C) and shall be subject to all terms of this Interim Order. Subparcels 004(b)-(d), located north of New Poag Road, and 026(c) and (d), located east of the current location of Old Alton Road, and Parcels 007, 020, 021, 022, and 027 are also part of the Estate, but off the Chemetco plant grounds, and one or more these particular seven parcels are areas where hazardous substances generated during the course of Chemetco's operations may have come to be located and these parcels shall be subject only to Sections V, VII-XI, XIV, XVIII-XXI, and XXVI of this Interim Order until the Trustee proposes to do Work on one or more of those parcels or the Interim Order is modified to subject any of these parcels to other requirements of the Interim Order. In any event, these parcels remain subject to evaluation by the State and U.S. EPA to determine whether response actions on such areas may be necessary.

**Facility Assets** shall mean all potentially saleable material and equipment present on facility grounds, including but not limited to the foundry building, the four smelting furnaces housed in the foundry building, office buildings, storage buildings, a Slag pile and other accumulations of Slag (a by-product of the smelting process), scrubber sludge and other metal bearing materials, two parking lots, a stormwater management system, a bunker containing "zinc oxide" and other materials, a black acid storage tank, a rotary dryer, screening equipment, and air pollution control equipment, and the real estate.

**Former Officers, Directors, and Employees** shall mean any and all individuals who served as

officers or directors of Chemetco, Inc., or who were employed by Chemetco, Inc., prior to and up to the date of filing of the Bankruptcy Case.

**Foundry Building** shall mean that building that previously housed the smelter operation at the Facility and which is depicted as Building #1 on the Facility Map found in Appendix B.

**Demolition and Scrapping Plan** shall mean one or more documents to be submitted by the Trustee to Illinois EPA for approval pursuant to Paragraphs 18 through 20 of this Interim Order in the event the Trustee elects to contract for the demolition and scrapping of a Facility Asset or Assets.

**Hazardous Substances** shall mean the substances identified in CERCLA Section 101(14), 42 U.S.C. § 9601(14).

**Hazardous Waste or RCRA Hazardous Waste** shall mean the substances identified in RCRA Section 101(14), 42 U.S.C. § 6903(5).

**Illinois EPA** shall mean the Illinois Environmental Protection Agency and any successor agencies of the State of Illinois.

**Metal Bearing Materials** shall mean the approximately 46,000 tons of Scrubber Sludge (including approximately 35,000 tons in the Zinc Oxide Bunker), approximately 900,000 tons of Slag, various and sundry former smelter feed stocks, "in-process" materials (including materials contained within or around former processing equipment), and sediments, sludges, metal spills and splatters, and dusts associated with former operations and past and future environmental cleanups at the Facility that contain economically viable and reclaimable concentrations of metals (including but not limited to copper, zinc, lead, tin, and nickel).

**National Contingency Plan** or "**NCP**" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

**Operation and Maintenance** or **O & M** shall mean all activities required to manage Facility



Assets and to provide stormwater management, fugitive emissions control and groundwater monitoring, and any other activities as required under the Operation and Maintenance Plan ("O&M Plan").

**Operation and Maintenance Plan** or **O&M Plan** shall mean the document to be submitted to the State for approval by the Trustee pursuant to Paragraph 17 of the Interim Order.

**Parties** shall mean the signatories to this Interim Order, the State, the Illinois EPA, and the Trustee on behalf of the Estate and Chemetco.

**Project Coordinator** shall mean each person designated as a project coordinator by a Party pursuant to Section XII of this Interim Order.

**RCRA** shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

**Response Action** shall mean past or future actions undertaken or approved by the State and/or U.S. EPA, pursuant to CERCLA, RCRA or the Clean Water Act.

**Scrubber Sludge** shall mean, in general, a granular solid material that was recovered from the dust collection systems operated in conjunction with the former Chemetco secondary copper smelting process. From startup of the Facility in 1970 until the mid-1980's, scrubber sludge was collected as a wet slurry in earthen pits and later transferred to a bunker. After the mid-1980s the Scrubber Sludge was collected as a wet filter cake and dry solid and stockpiled under cover in process buildings for recycling and commercial sales due to the presence of metal oxides, such as come from copper, zinc, lead, tin, and nickel. The Scrubber Sludge exhibits a characteristic of Hazardous Waste as determined by the toxic characteristic leaching procedure ("TCLP") for lead and cadmium.

**Section** shall mean a portion of this Interim Order identified by a Roman numeral.

**Slag** shall mean, in general, an iron-silicate solid material that was a by-product of the former Chemetco secondary copper smelting process, that was produced as a liquid, transported outside the smelter process building and placed in stockpiles where it was cooled, by air or water, and solidified.

The Slag at the Facility contains metal oxides, such as copper, zinc, lead, tin, and nickel. The Slag exhibits the characteristic of a hazardous waste as determined by the TCLP for lead and cadmium.

**State** shall mean the State of Illinois and all of its departments and agencies, including but not limited to the Illinois Environmental Protection Agency ("IEPA") and the Illinois Attorney General.

**State Act** shall mean the Illinois Environmental Protection Act, 415 ILCS 5/1-58.12 (2002).

**Successor-in-Title** shall mean any person who acquires any possessory interest in any property included in the Facility, other than a person who acquires such interest solely to protect a security interest in the property and who has not exercised any right to enter or possess the property.

**Supervising Contractor** shall mean the principal contractor retained by the Trustee, to supervise and direct the implementation of each Work Plan under this Interim Order.

**Trustee** shall mean the Trustee approved by the Court to act as representative of the Estate in *In re Chemetco*, No. 01-34066 (Bankr. S.D. Ill.), and not individually and/or personally.

**United States** shall mean the United States of America and all of its departments agencies and instrumentalities, including but not limited to U.S. EPA;

**U.S. EPA** shall mean the United States Environmental Protection Agency and any successor agencies of the United States.

**Waste** or **Solid Waste** shall mean the substances identified in RCRA Section 1004(27), 42 U.S.C. § 6903(27).

**Work** shall mean all actions undertaken by the Trustee under this Interim Order to liquidate Facility Assets, to demolish or scrap Facility Assets, or to move existing Facility Assets off-site without processing or treatment in accordance with the Work Plans required by this Interim Order excluding those listed in Appendix D. Any plan to manage and/or reuse the Facility, to sell/lease the Facility for reuse, process Scrubber Sludge, Slag, and other on-site materials to recover metals and other materials suitable for use or reuse as ingredients in an industrial process or as effective substitutes for commercial

products, not listed in Appendix D shall be the subject of a subsequent order or decree.

**Work Affected Materials or WAM** shall mean scrubber sludge, slag, metal bearing material, wastes, and substances accumulated on the surface of or within the Facility or Facility Assets that are managed, handled or otherwise dealt with in the performance of Work under this Interim Order.

**Working Day** shall mean a day other than a Saturday, Sunday or United States holiday. In computing any period of time under this Interim Order, where the last day would fall on a Saturday, Sunday, or United States holiday, the period shall run until the close of business of the next working day.

**Work Plans** shall mean any plan to liquidate Facility Assets, to demolish or scrap Facility Assets, or to move existing Facility Assets off-site without processing or treatment submitted and approved in accordance with this Interim Order.

#### **V. GENERAL PROVISIONS**

##### **5. Commitment to Proper Management of the Facility.**

The Trustee shall manage the Facility in accordance with this Interim Order and in accordance with all plans, standards, specifications, and schedules set forth in or developed in Work Plans approved by the State, pursuant to this Interim Order.

- a. The Trustee shall manage all Work Affected Materials as if it were a RCRA Hazardous Waste in accordance with the Hazardous Waste regulations.
- b. Shipment off-site of any material other than those listed in Appendix D will be subject to approval by the State, in accordance with 35 Ill. Adm. Code 721.102 and 721.106.
- c. The Trustee shall undertake any sales of equipment in accordance with applicable provisions of the Bankruptcy Code, 11 U.S.C. § 101, et seq., and in accordance with 35 Ill. Adm. Code regulations.
- d. All obligations of the Trustee under this Interim Order shall be understood to be obligations of the Estate and not of the Trustee, individually and/or personally.

**6. Application of ARARS.**

a. In performing Work under this Interim Order, the Trustee shall comply with all approved Work Plans.

b. All Work Plans prepared by the Trustee pursuant to this Interim Order shall include the obligation to achieve ARARs. Financial Assurance, if applicable as an ARAR pursuant to 35 Ill. Adm. Code Part 724, shall be addressed in the Work Plan.

c. In performing Work under this Interim Order, the Trustee shall comply with the National Contingency Plan ("NCP").

d. The Work conducted by the Trustee pursuant to this Interim Order, if completed consistent with ARARs and approved Work Plans, shall be considered to be consistent with the NCP.

**7. Notice to Prospective Purchasers of Real Property**

a. Within 60 days after the Effective Date, the Trustee shall place on the land records of Madison County, State of Illinois, a notice which:

(i) states that the real property comprising the Facility, including the Foundry Building and two parking lots, is subject to this Interim Order;

(ii) references the recorded location of this Interim Order and any restrictions applicable to the real property under this Interim Order; and

(iii) requires all future deeds, titles, or other instruments conveying an interest in the real property comprising the Facility to replicate such notice.

b. The Trustee or any successor-in-title shall, at least 60 days prior to the conveyance of an interest in the real property comprising the Facility, provide a copy of this Interim Order to each person proposed to receive such interest, and provide written notice to Illinois EPA of the proposed sale or lease, including the name and address of the prospective grantee/lessee, and the date on which a copy of this Interim Order was given to the prospective grantee/lessee.

8. **Notice to Contractors and Subcontractors.**

a. The Trustee shall provide a copy of this Interim Order to each contractor undertaking an obligation to manage one or more of the components of the Facility Assets, and shall condition all contracts entered into hereunder upon conformity with the terms of this Interim Order.

b. The Trustee or the Trustee's contractors shall provide written notice of this Interim Order to all subcontractors hired to perform any management of Facility Assets

c. Notwithstanding subparagraphs a. and b. of this Paragraph, the Trustee shall be responsible for ensuring that the Trustee's contractors and subcontractors perform the Work and manage the Facility in accordance with this Interim Order. With regard to the activities undertaken pursuant to this Interim Order, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Trustee within the meaning of CERCLA Section 107(b)(3), 42 U.S.C. § 9607(b)(3).

9. **Applicability of Bankruptcy Code Section 363.** All sales of Facility Assets shall be subject to the requirements of Section 363 of the Bankruptcy Code, 11 U.S.C. § 363.

10. **Relief from Agency Decisions:** Notwithstanding any other provision of this Interim Order other than a provision under which an Agency decision is not subject to review by a Court, the Estate reserves its right to seek relief pursuant to the Federal Rule of Civil Procedure 60(b) as to any Agency decision with which the Trustee disagrees. The State reserves its right to oppose any such motion.

**VI. PERFORMANCE OF THE WORK**

11. **Applicability of Seal Order**

a. The State and the Trustee agree that the Work to be performed hereunder shall not be deemed to be in violation of the Seal Order (attached hereto as Appendix C) issued December 4, 2001, pursuant to Section 34 of the State Act and filed with the Bankruptcy Court on December 8, 2001, and the State hereby consents to the presence at the Facility of those persons performing Work at the Facility

on behalf of the Trustee pursuant to an approved Work Plan.

b. In addition to the State's authority to stop the Work set forth in Paragraphs 26 and 48, the State may revoke this consent to address noncompliance with an applicable Work Plan

12. **Selection of Supervising Contractor**

a. All aspects of the implementation of each Work Plan shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to approval by the State, which approval shall not be unreasonably withheld. The Trustee shall propose the Supervising Contractor in each Work Plan submitted.

b. If, at any time thereafter, the Trustee proposes to change a Supervising Contractor, the Trustee shall give such notice to the State, and must obtain an authorization to proceed from the State before the new Supervising Contractor performs, directs, or supervises Work, or the management of Facility Assets under this Interim Order.

c. If the State disapproves a proposed Supervising Contractor, the State will notify the Trustee in writing. The Trustee, within 60 days of receipt of the notice of disapproval of the previously proposed contractor shall submit to the State a list of contractors, including the qualifications of each contractor, that would be acceptable to the State. The State will provide written notice of the names of any contractor(s), contained in the Trustee's list whom the State disapprove, as well as an authorization to proceed with respect to any of the other contractors on the list. Subject to the requirements of Section 327 of the Bankruptcy Code, 11 U.S.C. § 327, the Trustee may select any contractor from that list that is not disapproved, and the Trustee shall notify the State of the name of the contractor selected within 21 working days of the date of the State's authorization to proceed.

d. If the State fails to provide written authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Trustee from meeting one or more deadlines in a plan approved by the State pursuant to this Interim Order, the Trustee may seek relief under the provisions of

Section XVI (Force Majeure).

**A. IMPLEMENTATION OF WORK PLANS**

13. All plans, submittals, or other deliverables required under the approved Work Plans shall be submitted to the State for approval by the State . The State shall not unreasonably deny approval of submitted Work Plans. Upon approval, the various Work Plans shall be incorporated into and become enforceable under this Interim Order, and the Trustee shall be obligated to comply with their terms and requirements.

14. The Work Plans shall be implemented by the Trustee, in consultation with the State, according to the approved schedules. Unless otherwise directed by the State, the Trustee shall not implement any Work Plan until it has been approved.

15. Nothing in this Interim Order or any of the Work Plans constitutes a warranty or representation of any kind by the State that compliance with the requirements set forth in the Work Plans will achieve ARARs or permit the reuse of the Facility for all purposes. Compliance with the Work Plan requirements shall not foreclose the State from seeking compliance with all terms and conditions of this Interim Order, including, but not limited to, identified ARARs.

16. The Trustee shall submit to the State's Project Coordinator, at the time of shipment, a copy of each manifest for any shipment of Waste off-Facility.

**B. OPERATION AND MAINTENANCE PLAN**

17. Within 60 days of the entry of this Interim Order, the Trustee shall submit an Operation and Maintenance Plan (O&M Plan) to the State for review and approval by the State . The O&M Plan shall update the existing stormwater management plan, fugitive emissions control plan, groundwater monitoring plan, and security plan to address current conditions at the Facility and the future management of the Facility Assets. The O&M Plan may be modified and upgraded by the Trustee, or at the direction of the State, and upon review and approval by the State, shall be implemented as so

modified.

**C. SCRAPPING AND DEMOLITION PLAN**

18. Nothing herein shall obligate the Trustee to undertake any scrapping or demolition of a Facility Asset. In the event the Trustee elects to contract for the demolition and scrapping of a Facility Asset, the Trustee shall submit a Scrapping/Demolition Plan to the State for approval. Upon approval by the State, the Scrapping/Demolition Plan shall be implemented by the Trustee in accordance with the approved schedule. All plans, submittals, or other deliverables required under the approved Scrapping/Demolition Plan shall be submitted to the State in accordance with the approved schedule for review and approval pursuant to Section XI (Submissions Requiring Approval).

19. The Trustee has previously submitted plans to address the closure of the Brick Shop Container Storage Area and the AAF Decontamination Area/Sump Area (attached hereto as Appendices E-1 and E-2) in response to Illinois EPA's Violation Notice, L-2007-01375. Both plans were conditionally approved by Illinois EPA on May 13, 2008 (attached hereto as Appendix E-3). These two closure plans shall be implemented as Work Plans under this Interim Order in accordance with the requirements of Appendix E-3. Within twenty-one days of entry of this Interim Order, an Addendum shall be submitted for approval by the State which shall include the following:

- a. plans and schedules for the disposition of all materials to be scrapped, salvaged, and/or resold and for the disposition of WAM;
- b. identification of and plans and procedures for complying with ARARs, including plans and procedures for preventing the release, or threatened release, of hazardous substances and, for the AAF Decontamination Area/Sump Area only, the remediation of soil and groundwater contaminated by hazardous substances or their constituents if necessary to satisfy Illinois EPA's Violation Notice, L-2007-01375 and Appendix E-3;
- c. Methods for satisfying permit requirements, where applicable;



d. Plans and procedures for the decontamination of equipment and the disposal of Waste including submission to the State's Project Coordinators, at the time of shipment, of a copy of each required manifest for any shipment off-Facility of Waste;

e. A health and safety plan for all activities which conforms to the applicable Occupational Safety and Health Administration requirements including, but not limited to, 29 C.F.R. §1910.120; and

f. When the State concludes in writing that the Trustee has certified completion of the approved Brick Shop Container Storage Work Plan or the AAF Decontamination Area/Sump Area Work Plan in accordance with Section XIII (Certification of Completion), the respective violations from the Illinois EPA's Violation Notice, L-2007-01375, shall be deemed resolved.

20. A Scrapping/Demolition Plan addressing either the planned scrapping/demolition of the Foundry building, or sale of the furnaces, shall include all plans and schedules for implementation of all work required for such activities, including:

a. plans and schedules for the disposition of all materials to be scrapped, salvaged, and/or resold and for the disposition of WAM;

b. identification of and plans and procedures for complying with ARARs, including plans and procedures for preventing the release, or threatened release, of hazardous substances;

c. Methods for satisfying permit requirements, where applicable;

d. Plans and procedures for the decontamination of equipment and the disposal of Waste including submission to the State's Project Coordinators, at the time of shipment, of a copy of each required manifest for any shipment off-Facility of Waste; and

e. A health and safety plan for all activities which conforms to the applicable Occupational Safety and Health Administration requirements including, but not limited to, 29 C.F.R. §1910.120.

#### **D. SCRUBBER SLUDGE AND SLAG PROCESSING**

21. In the event the Trustees wishes to proceed with processing of Scrubber Sludge or Slag,

the development and entry of an additional Order or Decree shall be required before such processing may proceed.

**E. ADDITIONAL RESPONSE ACTIONS**

22. a. In the event that the State determines, or the Trustee proposes, and the State agrees, that additional actions are necessary to meet ARARs identified in conjunction with the approval of the Work Plans, the State shall provide a written request for such additional actions to the Project Coordinator for the Trustee.

b. Within 60 days of receipt of the written request from the State referred to in subparagraph a. of this Paragraph, the Trustee shall submit to the State for approval by the State a Work Plan for the additional work. Upon approval of such plan, the Trustee shall implement the plan in accordance with the schedule contained therein.

23. The Trustee may invoke the procedures set forth in Section XVII (Dispute Resolution) to dispute a determination by the State that additional work is necessary to meet ARARs. Such a dispute shall be resolved pursuant to Section XVII (Dispute Resolution) of this Interim Order.

**VII. DUE CARE/COOPERATION**

24. The Trustee and her contractors, subcontractors, agents or affiliates shall exercise due and appropriate care at the Facility with respect to the Hazardous Substances at the Facility and shall comply with all Work Plans and ARARs in undertaking Work at the Facility.

25. The Estate recognizes that the State's implementation of Response Actions to address environmental contamination at the Facility may interfere with the Estate's use of the Facility, or portion of the Facility, and may require stoppage or cessation of Work. The Estate agrees to cooperate fully with the State in the implementation of any stoppage or cessation of Work at the Facility and further agrees not to interfere with such response actions. The State agrees, consistent with their responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Estate's operations.

26. If the State determines that the Response Action selected under CERCLA requires a stoppage or cessation of Work in circumstances not addressed by Section XIV (Emergency Response) below, the State may issue a Stoppage or Cessation of Work order to the Estate. The Trustee may only invoke dispute resolution pursuant to Section XVII below to address the impact of such an Order on its operations. Pursuant to CERCLA Section 113, 42 U.S.C. § 9613, any Response Action selected by the State shall not be subject to the Dispute Resolution provisions of Section XVII below. Implementation of a Stoppage or Cessation of Work Order issued pursuant to this provision shall not take effect until the dispute resolution process has concluded.

#### **VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS**

27. The Trustee shall take all treatability, design, ARARs, compliance and monitoring samples in accordance with the quality assurance, quality control, and chain of custody procedures set forth in U.S. EPA's "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80); "Data Quality -- Objective Guidance," (U.S. EPA/540/G87003 and 004); "U.S. EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (U.S. EPA 330/9-78-001-R); and subsequent amendments to such guidelines upon notification by the State to the Trustee of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with those standards and reviewed and approved by the State shall be admissible as evidence, without objection, in any proceeding under this Interim Order. The Trustee shall ensure that the laboratories that the Trustee or the Trustee's agents use for the analyses of samples taken pursuant to this Interim Order perform all analyses according to accepted U.S. EPA methods. Accepted U.S. EPA methods consist of those methods which are documented in U.S. EPA "Test Methods for Solid Waste" SW-846, the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any

amendment made thereto during the course of the implementation of this Interim Order. The Trustee shall ensure that all laboratories that the Trustee or the Trustee's agents use for the analyses of samples taken pursuant to this Interim Order participate in an U.S. EPA or U.S. EPA-equivalent QA/QC program.

28. Upon request, the Trustee shall allow split or duplicate samples to be taken by the State or their authorized representatives. The Trustee shall notify the State not less than 14 days in advance of any sample collection activity on the Trustee's behalf, unless shorter notice is agreed to by the State. In addition, the State shall have the right to take any additional samples that they deem necessary. Upon request, the State shall allow the Trustee to take split or duplicate samples of any samples that they undertake as part of their oversight of the Trustee's implementation of the Work.

29. The Trustee shall submit to the State copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of the Trustee with respect to the implementation of this Interim Order unless the State agree otherwise.

30. Notwithstanding any provision of this Interim Order, the State hereby retains all information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, the State Act, and any other applicable statutes or regulations.

#### **IX. ACCESS**

31. Commencing upon the date of entry of this Interim Order, the Trustee agrees to provide the State and their officers, employees, representatives and contractors and all other persons performing response actions at the Facility under the State's oversight, an irrevocable right of access at all reasonable times to the Facility and any other property to which access is required for the implementation of this Interim Order or other required response actions, to the extent access to the property is controlled by the Trustee, for the purposes of conducting any activity related to this Interim Order, as set forth below, and/or conducting response actions under federal and State law. The State agrees to provide reasonable notice to the Trustee of the timing of response action to be undertaken at the Facility. The activities to be

undertaken at the Facility by the State include but are not limited to:

- a. Monitoring the Work at the Facility;
- b. Verifying any data or information submitted to the State;
- c. Conducting investigations relating to contamination at or near the Facility;
- d. Obtaining samples and taking photographs and video;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Facility;
- f. Inspecting and copying records, operating logs, contracts, or other documents, including documents relating to operating costs and revenues from the disposition of Facility Assets, maintained or generated by the Trustee or the Trustee's agents, consistent with Section XVIII (Access to Information);
- g. Assessing the Trustee's compliance with this Interim Order; and
- h. Undertaking response actions as determined to be required by the State.

32. To the extent that the Facility or any other property to which access is required for the implementation of this Interim Order is sold or leased by the Trustee to persons other than the Estate, the Trustee shall condition the transaction to require that such persons provide access to the Estate, the State, and their representatives including, but not limited to, their contractors, as necessary to effectuate this Interim Order.

33. Notwithstanding any provision of this Interim Order, the State retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, the State Act, and any other applicable statute or regulations.

#### **X. REPORTING REQUIREMENTS**

34. a. In addition to any other requirement of this Interim Order, the Trustee, shall submit to the State, pursuant to the schedule below, written progress reports that:

- (i) Describe the actions which have been taken toward achieving compliance with this Interim Order during the previous reporting period;
- (ii) Include a summary of all results of sampling and tests and all other data received or generated by the Trustee or the Trustee's contractors or agents in the previous reporting period;
- (iii) Identify all work plans, plans and other deliverables required by this Interim Order completed and submitted during the previous reporting period;
- (iv) Describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next reporting period and provide other information relating to the progress of construction;
- (v) Include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; and
- (vi) Include any modifications to the work plans or other schedules that the Trustee has proposed to the State or that have been approved by the State.

b. The Trustee shall submit all reports referred to in Paragraph 34.a. in accordance with the schedule in the applicable approved Work Plan. The Trustee shall submit these progress reports to the State by the tenth day of the new reporting period following entry of this Interim Order until certification of completion by the State under Section XIII, Paragraph 46 of the applicable approved Work Plan. If requested by the State, the Trustee shall also provide briefings for the State to discuss the progress of the Work.

35. All actions, including data collection and implementation of approved Work Plans, described in the progress reports for the performance of any activity, may be accelerated if notice is given to the State no later than fourteen days prior to the performance of the activity. Upon the occurrence of any event during performance of the Work that the Trustee is required to report pursuant to CERCLA

Section 103, 42 § 9603, or Section 304 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11004, the Trustee, within 24 hours of the onset of such event, shall orally notify the State Project Coordinator (or the Alternate State Project Coordinator in the event of the unavailability of the State Project Coordinator) or, in the event that neither the State Project Coordinator or Alternate State Project Coordinator is not available, the Emergency Response Section of Illinois EPA (217-782-3637). These reporting requirements are in addition to the reporting required by CERCLA Section 103, 42 U.S.C. § 9603, and EPCRA Section 304, 42 U.S.C. § 11004.

36. Within seven (7) days of the onset of such an event, the Trustee shall furnish to the State a written report, signed by the Trustee’s Project Coordinator, setting forth the events that occurred and the measures taken, and to be taken, in response thereto. Within 21 days of the conclusion of such event, the Trustee shall submit a report setting forth all actions the Trustee has taken in response thereto.

37. The Trustee shall submit all plans, reports and data required by the Work Plans or any other approved plans to the State in accordance with the schedules set forth in such plans. The Trustee shall submit five (5) copies of all such plans, reports and data to the State unless otherwise agreed to.

38. All reports and other documents submitted to the State (other than the progress reports referred to in the preceding Paragraph 34) which purport to document compliance with the terms of this Interim Order shall be signed by an authorized representative of the party on whose behalf the documentation is being submitted.

#### **XI. SUBMISSIONS REQUIRING APPROVAL**

39. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Interim Order (other than for any permit application required for on site disposal), the State shall:

- a. Approve, in whole or in part, the submission;
- b. Approve the submission upon specified conditions;

- c. Modify the submission to cure deficiencies;
- d. Disapprove, in whole or in part, the submission, directing that the submission be modified; or
- e. Any combination of the above.

If the State intends to approve the submission upon specified conditions, modify the submission or disapprove the submission, the State shall provide an opportunity for an informal conference and exchange of information and documents used before reaching a final decision.

40. In the event of approval, or approval upon conditions, pursuant to Paragraph 39.a., b., or c. (and following an opportunity for informal conference and exchange of information, if applicable), all actions required by the plan, report, or other items, as approved or modified by the State, shall proceed subject only to the invocation of the Dispute Resolution procedures set forth in Section XVII (Dispute Resolution) with respect to the modifications or conditions established by the State that are not agreed to by the Trustee. In the event that such a submission by the Trustee has a material defect, and the State, modifies the submission to cure the deficiencies pursuant to Paragraph 39.c., the State each retains its right to address the submission of a plan, report, or other item that has a material defect by seeking relief from the Court or through pursuing other available remedies.

41. Notice of Disapproval

a. Upon receipt of a notice of disapproval pursuant to Paragraph 39.d. (and following an opportunity to confer and exchange information, if applicable), within 60 days or such other time as specified in such notice, the deficiencies shall be corrected and the plan, report, or other item shall be resubmitted by the Trustee for approval.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 39.d., at the direction of the State, any action required by any non-deficient portion of the submission may proceed provided such portion is reasonably severable from the unapproved portions.



42. In the event that a resubmitted plan, report, other item, or portion thereof, is disapproved by the State, the State may again require correction of the deficiencies, in accordance with the preceding Paragraphs. The State retains the right to amend or develop the plan, report or other item. Any such amended or developed plan shall be implemented by the Trustee, as amended or developed by the State, subject only to the Trustee's right to invoke the procedures set forth in Section XVII (Dispute Resolution) and/or to seek relief pursuant to Federal Rule of Civil Procedure 60(b).

43. Submittal of Plans

a. All plans, reports, and other items required to be submitted to the State under this Interim Order shall, upon approval or modification by the State, be enforceable under this Interim Order. In the event the State approves or modifies a portion of a plan, report, or other item required to be submitted to the State under this Interim Order, the approved or modified portion shall be enforceable under this Interim Order.

b. All plans, reports and other items required to be submitted to the State under this Interim Order shall be prepared in compliance with the terms of the applicable professional licensing statute and regulations promulgated thereunder.

**XII. PROJECT COORDINATORS**

44. Within 30 days following the entry of this Interim Order, the Trustee and the State will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other parties at least 30 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Trustee's Project Coordinator shall be subject to disapproval by the State, and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Trustee's Project Coordinator shall not be an attorney for the Estate in this matter. The Trustee's Project Coordinator may

assign other representatives, including other contractors, to serve as a Facility representative for oversight of performance of daily operations during remedial activities.

45. The State may designate other representatives, including, but not limited to State employees and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Interim Order. The State's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the National Contingency Plan, 40 C.F.R. Part 300. In addition, the State's Project Coordinator and Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any activities required by this Interim Order and to take any necessary response action when s/he determines that conditions at the Facility constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Hazardous Substances.

### **XIII. CERTIFICATION OF COMPLETION**

46. **Completion of Work Plans.**

a. The Interim Order will terminate on the 3<sup>rd</sup> anniversary of the Court's entry of this Interim Order and the Trustee shall schedule Work under this Interim Order to meet that date.

b. Within 120 days after the Trustee determines that an approved Work Plan has been fully performed and the ARARs have been attained, the Trustee shall schedule and conduct a pre-certification inspection to be attended by the Trustee, the Supervising Contractor, and the State. If, after the pre-certification inspection, the Trustee still believes that the Work Plan has been fully performed and the ARARs have been attained, the Trustee shall submit a written report requesting certification to the State, pursuant to Section XI (Submissions Requiring Approval) within 60 days of the inspection. In the report, a Professional Engineer registered in the State of Illinois shall state that the Work Plan has been completed in full satisfaction of the requirements of this Interim Order. The written report shall include as-built drawings signed and stamped by a Professional Engineer registered in the State of

Illinois. The report shall contain the following statement, signed by a responsible corporate official or representative of such person:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

c. If, after completion of the pre-certification inspection and receipt and review of the written report, the State determines that the Work Plan or any portion thereof (including any modification thereto pursuant to the terms of this Interim Order) has not been completed in accordance with this Interim Order or that ARARs have not been achieved, the State will notify the Trustee in writing by certified letter of the activities that must be undertaken to complete the Work Plan and achieve the ARARs contained within the approved Work Plan. The State will set forth in the certified letter a schedule for performance of such activities consistent with this Interim Order or require the Trustee to submit a schedule to the State pursuant to Section XI (Submissions Requiring Approval). The Trustee shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to such the Trustee's right to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution).

d. If the State concludes, based on the initial or any subsequent report requesting Certification of Completion, that the Work Plan has been fully performed in accordance with this Interim Order and that the ARARs as they may have been modified pursuant to this Interim Order, have been achieved, the State will so certify in writing to the Trustee. This certification shall constitute the Certification of Completion of the Work Plan for purposes of this Interim Order. The Certification of Completion of the Work Plan shall not affect the other obligations under this Interim Order. The Trustee shall file the Certification of Completion of the Work Plan with the Recorder of Deeds within thirty (30) days of issuance.

#### **XIV. EMERGENCY RESPONSE**

47. In the event of any action or occurrence during the performance of a Work Plan which causes or threatens a release of Hazardous Substances from the Facility that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Trustee shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the State's Project Coordinator, or, if the Project Coordinator is unavailable, the State's Alternate Project Coordinator. If neither of these persons is available, the Trustee shall notify U.S. EPA and the State Emergency Response Unit (217-782-3637) and shall take such actions in consultation with the State's Project Coordinator or other available authorized State officer and in accordance with all applicable provision of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to this Interim Order. In the event that the Trustee or the entity implementing the Work Plan fails to take appropriate response action as required by this Section, and U.S. EPA or the State takes such action instead, the Estate or that entity shall reimburse U.S. EPA and the State for all their respective costs of the response action not inconsistent with the NCP, if applicable.

48. Nothing in the preceding Paragraph or in this Interim Order shall be deemed to limit any authority of the State to take, direct or order all appropriate action (including but not limited to issuing a Stoppage or Cessation of Work Order) or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Hazardous Substances on, at, or from the Facility.

#### **XV. INDEMNIFICATION AND INSURANCE**

49. The State does not assume any liability by entering into this agreement, and the State shall be held out as a party to any contract entered into by or on behalf of the Estate in carrying out activities pursuant to this Interim Order. Neither the Trustee nor any of the Trustee's contractors or

assigns shall be considered an agent of the State.

50. The Estate waives all claims against the State for damages or reimbursement or for set-off of any payments made or to be made to the State, arising from or on account of any contract, agreement, or arrangement between any one or more persons and the Estate for performance of Work on or relating to the Facility, including, but not limited to, claims on account of construction delays.

#### **XVI. FORCE MAJEURE**

51. Force Majeure, for purposes of this Interim Order, is defined as any event arising from causes beyond the control of the Trustee (either individually or in her representative capacity as Trustee of the Estate), or of any entity controlled by the Trustee, not individually but solely in her representative capacity as Trustee of the Estate, including but not limited to, the Trustee's contractors and subcontractors, that delays or prevents performance of any obligation under this Interim Order despite the Trustee's best efforts to fulfill the obligation. The requirement that the Trustee exercise "best efforts to fulfill the obligation" includes using best efforts to address the effects of any potential Force Majeure event (1) as it is occurring and (2) following the potential Force Majeure event, such that the delay is minimized to the greatest extent reasonably possible. "Force Majeure" does not include financial inability to complete the Work, except as provided in Section XXIV (Termination of Trusteeship/Estate/Interim Order), or a failure to attain the ARARs.

52. If any event occurs or has occurred that may delay or prevent the performance of any obligations under this Interim Order, whether or not caused by a Force Majeure event, the Trustee shall notify orally the State's Project Coordinator or, in his or her absence, the State's Alternative Project Coordinator or, in the event both of the State's designated representatives are unavailable, the manager of Illinois EPA's Remedial Project Management Section within 48 hours of when the Trustee first knew or should have known that the event might cause a delay. Within 10 working days thereafter, the Trustee shall provide in writing to the State: (1) an explanation and description of the reasons for the delay; (2)

the anticipated duration of the delay; (3) all actions taken or to be taken to prevent or minimize the delay; (4) a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; (5) the Trustee's rationale for attributing such delay to a Force Majeure event if the Trustee intends to assert such a claim; and (6) a statement as to whether, in the opinion of the Trustee, such event may cause or contribute to an endangerment to public health, welfare or the environment.

The Trustee shall include with any notice all available documentation supporting the Trustee's claim that the delay or prevention of performance was attributable to a Force Majeure. Failure to comply with the above requirements shall preclude the Trustee from asserting any claim of Force Majeure for that event.

The Trustee shall be deemed to have notice of any circumstance of which the Trustee's contractors or subcontractors had or should have had notice.

53. If the State agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations and any subsequent obligations dependent on the completion of the delayed activity under this Interim Order that are affected by the Force Majeure event will be extended by the State, for such time as is necessary to compensate for the delay including, but not limited to, demobilization time. An extension of the time for obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation that does not depend solely on the delayed activity. If the State does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, the State will notify the Trustee in writing of such decision. If the State agrees that the delay is attributable to a Force Majeure event, the State will notify the Trustee in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

54. In the event that the Trustee objects to a determination by the State under the preceding Paragraph, and the Trustee elects to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution), the Trustee shall do so no later than 15 days after receipt of the State's notice. In

any such proceeding, the Trustee shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effect of the delay, and that the Trustee complied with the requirements of Paragraphs 51 and 52, above. If the Trustee carries this burden, the delay at issue shall be deemed not to be a violation by the Trustee of the affected obligation of this Interim Order identified to U.S. EPA, the State and the Court.

#### **XVII. DISPUTE RESOLUTION**

55. Unless otherwise expressly provided for in this Interim Order, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Interim Order. However, the procedure set forth in this Section shall not apply to actions by the State to enforce obligations of the Estate that have not been disputed in accordance with this Section.

56. Any dispute which arises under or with respect to this Interim Order shall in the first instance be the subject of informal negotiations between the Parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

#### **57. Dispute Resolution Schedule**

a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph 56, then the position advanced by the State shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, the formal dispute resolution procedures of this Section are invoked by serving on and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion

supporting that position and any supporting documentation relied upon by the Trustee.

b. Within fourteen (14) days after receipt of the Statement of Position, the State will serve their Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the State.

c. Within fourteen (14) days after receipt of the State's Statement of Position, a response may be filed including but not limited to any factual data, analysis or opinion supporting its position or refuting any position by the State.

d. Following receipt of the Statement of Position submitted pursuant to Paragraph 57.a., the State will issue a final decision resolving the dispute. That decision shall be binding, unless, within 20 days of receipt of the decision, a notice of judicial appeal is filed with the Court and served on the State setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Interim Order. The State may file response to the notice of judicial appeal.

e. Judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

58. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation under this Interim Order not directly in dispute, except those solely dependent on the completion of the disputed activity unless the Court or the State agree otherwise.

59. Nothing in this Interim Order shall be construed as prohibiting, altering, or in any way limiting the ability of the State to seek from the Estate any other remedies or sanctions available by virtue of the Estate's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to CERCLA, RCRA, or Section 42 of the State Act, 415 ILCS 5/42(f) (2002).



**XVIII. ACCESS TO INFORMATION**

60. a. Until such time as the Bankruptcy Case is closed, the Trustee agrees to seek leave of this Court if she intends to dispose of or destroy any Chemetco record that relates in any manner to environmental conditions at the Chemetco Facility or the liability of any person other than Chemetco for response actions conducted or to be conducted at the Facility which the Trustee is not obligated under the Bankruptcy Code to retain until the Bankruptcy Case is closed or if she intends to sell, lease, transfer, or abandon any Facility Asset housing or holding such records and provide the State at least ninety (90) days advance written notice prior to the proposed disposition or destruction of any such records and documents, including the Wang System, or the disposition of any Facility Asset housing or holding such records. The Trustee shall turn such documents over to the State if requested by them during the waiting period unless the Court directs that they be turned over to some other entity.

b. The Trustee shall also instruct the Trustee's contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work. Nothing herein shall require the Trustee to retain records beyond the time of closure of the Bankruptcy Case. If no request for delivery of documents is received within 90 days of notice of closure of the Bankruptcy Case, the documents may be destroyed.

c. Until such time as the Bankruptcy Case is closed or as provided in the leave granted by the Court pursuant to subpar.60.a above, the Trustee agrees to provide the State, upon request, access and an opportunity to copy all documents and information within possession or control of the Trustee's contractors and agents relating to activities at the Chemetco Facility, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information relating to the Facility, including documents related to operating costs or revenues, or the liability of any person other than Chemetco, for response actions conducted or to be conducted at the Facility: Provided, any documents involving the processing

of materials or related to operating costs or revenues shall not be subject to the Freedom of Information Act and shall be treated as Business Confidential by the State.

d. Until the Bankruptcy Case is closed or as provided in the leave granted by the Court pursuant to subpar.60.a above, the Trustee shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Facility, regardless of any corporate retention policy to the contrary.

e. The Trustee certifies that since the filing of the Petition for Relief by Chemetco, the Trustee has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Facility and that it has fully complied with any and all of the State's requests for information.

61. Until such time as the Bankruptcy Case is closed, the Trustee shall also make available to the State, for purposes of investigation, information gathering, or testimony, all of her then current employees, agents, or representatives who possess knowledge of relevant facts concerning the performance of the Work.

62. The Estate may assert business confidentiality claims covering part or all of the documents or information submitted to the State under this Interim Order to the extent permitted by and in accordance with section 7 of the State Act, 415 ILCS 5/7 (2002), and 2 Ill. Adm. Code Part 1827. Documents or information determined to be confidential by Illinois EPA will be afforded the protection specified in Section 7 of the State Act, 415 ILCS 5/7 (2002). If no claim of confidentiality accompanies documents or information when they are submitted to the State, or Illinois EPA has notified the Trustee that the documents or information are not confidential under the standards of Section 7 of the Act, 415 ILCS 5/7 (2002), the public may be given access to such documents or information without further notice to the Trustee.

63. The Trustee may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Trustee asserts such a privilege in lieu of providing documents, they shall provide the State with the following: (1) the title of the document, record or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by the Trustee. However, no documents, reports or other information created or generated pursuant to the requirements of this Interim Order shall be withheld on the grounds that they are privileged.

64. No claim of confidentiality or privilege shall be made with respect to any data, including, but not limited to all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Facility.

#### **XIX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

65. Except as provided in Paragraph 3, nothing in this Interim Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Interim Order. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law.

66. The Parties agree, and by entering this Interim Order this Court finds, that the Trustee is entitled, as of the date of entry of this Interim Order, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Interim Order. The "matters addressed" in this Interim Order are all Work to be undertaken by the Trustee in accordance with approved Work Plans.

#### **XX. NOTICES AND SUBMISSIONS**

67. Whenever, under the terms of this Interim Order, written notice is required to be given or

a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Interim Order with respect to the State, and the Estate, respectively.

As to the State:

Erin Rednour	James L. Morgan
State Project Coordinator	Assistant Attorney General
Illinois EPA RPMS/BOL	Environmental Bureau
1021 North Grand Avenue East	500 South Second Street
Springfield, IL 62794-9276	Springfield, IL 62706
(five copies)	(one copy)

Alternate Project Coordinator: Sandra Bron

As to the Estate:

Laura Grandy, Trustee  
Mathis, Marifian, Richter & Grandy, Ltd.  
23 Public Square  
Suite 300  
Belleville, IL 62220

Penni S. Livingston  
Livingston Law Firm  
5701 Perrin Road  
Fairview Heights, IL 62208

**XXI. EFFECTIVE DATE**

68. The effective date of this Interim Order shall be the date upon which this Interim Order is entered by the Court.

**XXII. CONTINUING JURISDICTION**

69. This Court retains jurisdiction over both the subject matter of this Interim Order and the Estate for the duration of the performance of the terms and provisions of this Interim Order for the

purpose of enabling any of the Parties to apply to the Court at any time for such further Decree, direction, and relief as may be necessary or appropriate, for the construction or modification of this Interim Order, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XVII (Dispute Resolution) hereof.

**XXIII. EARLY TERMINATION OF TRUSTEESHIP/ESTATE/INTERIM ORDER**

70. No portion of the Facility may be abandoned by the Trustee prior to closure of the Bankruptcy Case based upon a determination that such portion of the Facility is of no value to the Estate in the absence of an Order by the Bankruptcy Court authorizing such action. As a condition of such abandonment, the Estate must be in compliance with the requirements of this Interim Order, including any Work Plan applicable to that portion of the Facility unless performance of that Work Plan has not been commenced.

71. At least 20 days prior to filing a Notice of Motion to Abandon any portion of the Facility for which a Certification of Completion has not been issued pursuant to Section XIII of this Interim Order, the Trustee will provide notice to the State of the Trustee's intent to file such motion, together with a description of that portion of the Facility proposed to be abandoned. Following receipt of such notice, the State will jointly survey the area proposed for abandonment, and the State will determine what work required under this Interim Order remains to be accomplished. The results of the survey and the State's determination will be provided to the Trustee.

72. This Interim Order may be terminated following the issuance of a Certification of Completion for all Work Plans that the Trustee implements, provided that the Trustee certifies to the State that the Trustee has: (1) made all payments required by this Interim Order; and (2) fulfilled the other requirements of this Interim Order. Within sixty (60) days following such certification, any Party may move for termination of this Interim Order. An objection to the Trustee's certification shall be subject to the Dispute Resolution provisions of this Interim Order.

73. Termination of this Interim Order shall release the Trustee from all obligations under this Interim Order, except for any remaining document retention obligation under Section XIX (Retention of Records) and any post-closure requirements applicable as a result of Work performed under this Interim Order.

#### **XXIV. APPENDICES**

74. The following appendices are attached to and incorporated into this Interim Order:

- Appendix A: Potential ARARs
- Appendix B: Maps of the Facility
- Appendix C: December 4, 2001 Seal Order
- Appendix D: Excluded Materials
- Appendix E-1: January 31, 2008 RCRA Closure Plan/AAF Decontamination Area and Sump
- Appendix E-2: January 29, 2008 RCRA Closure Plan/Brick Shop Container Storage Area
- Appendix E-3: Illinois EPA May 13, 2008, Closure Plans Conditional Approval Letter

#### **XXV. MODIFICATION**

75. All modifications, whether material or non-material, shall be deemed an enforceable part of this Interim Order.

76. There shall be no material modification of this Interim Order or the Appendices hereto, without written approval by all of the Parties and the Court.

77. Any non-material modification of this Interim Order, or its Appendices shall be in writing and signed by the Parties. Any modifications to the Appendices that are specifically allowed under the terms of those Appendices may be made in accordance with the terms of those Appendices.

78. **Modification of Approved Work Plans**

a. To obtain approval to modify any approved Work Plan, the Estate shall comply with the requirements of 35 Ill. Adm. Code 703.280-703.283 and Part 703:Appendix A: Provided, the references in 35 Ill. Adm. Code 703.280-703.283 and Part 703:Appendix A to "permit" shall be read to mean "approved Work Plan" and references to "permittee" shall be read to mean the Estate.

b. The State shall employ the procedures set forth in 35 Ill. Adm. Code 703-280-703.283 to review each request for modification of an approved Work Plan, and each such request shall be approved or denied by the State.

79. Schedules specified in this Interim Order for performance of the Work may be modified by agreement of the and the Trustee and the State. All such modifications shall be made in writing.

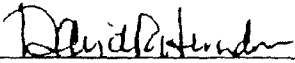
80. Except as set forth in Paragraph 79, nothing in this Interim Order shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Interim Order.

81. If for any reason this Interim Order is not approved by either the Bankruptcy Court or the District Court: (a) this Interim Order shall be null and void and the Parties shall not be bound hereunder or under any documents executed in connection herewith; (b) the Parties shall have no liability to one another arising out of or in connection with this Interim Order or under any documents executed in connection herewith; (c) this Interim Order and any documents prepared in connection herewith shall have no residual or probative effect or value, and it shall be as if they had never been executed; and (d) this Interim Order, any statements made in connection with settlement discussions, and any documents prepared in connection herewith may not be used as evidence in any litigation between the Parties. This Interim Order is without prejudice to, and nothing in this Interim Order shall be construed to waive, any of the Parties' legal contentions in the Pleadings.

**XXVI. SIGNATORIES**

82. Each undersigned representative of the Estate, the Attorney General of the State of Illinois or her designee, the Illinois Environmental Protection Agency or his designee, certifies that he or she is fully authorized to enter into the terms and conditions of this Interim Order and to execute and legally bind such party to this document.

So Ordered this 16<sup>th</sup> day of September, 2008,

  
United States District Court Judge

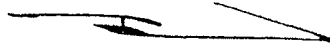


The Undersigned Parties enter into this Interim Order in the matter of *United States and People of the State of Illinois, ex rel. Lisa Madigan, Attorney General of the State of Illinois v. Chemetco, Inc.*, Civil Nos. 00-670-DRH, 00-677-DRH (S.D. Ill.):

ON BEHALF OF THE PEOPLE  
OF THE STATE OF ILLINOIS

LISA MADIGAN  
ATTORNEY GENERAL

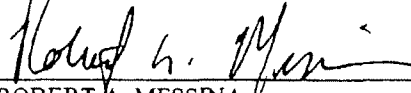
MATTHEW DUNN  
Chief, Environmental Enforcement  
Asbestos Litigation Division



---

THOMAS E. DAVIS  
Chief, Environmental Bureau

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

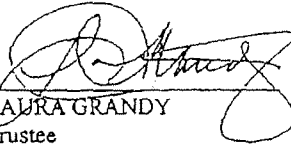


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ROBERT A. MESSINA  
Chief Legal Counsel

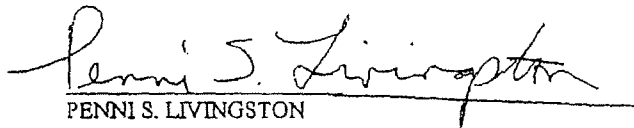
The Undersigned Party enters into this Interim Order in the matter of *United States and People of the State of Illinois, ex rel. Lisa Madigan, Attorney General of the State of Illinois v. Chemetco, Inc.*, Civil Nos. 00-670-DRH, 00-677-DRH (S.D. Ill.):

ON BEHALF OF THE DEFENDANT CHEMETCO, INC., AND ON BEHALF OF CHEMETCO, INC.,  
A DEBTOR.



LAURA GRANDY  
Trustee

Mathis, Marifian, Richter & Grandy, Ltd.  
23 Public Square  
Suite 300  
Belleville, IL 62220



PENNI S. LIVINGSTON  
Environmental Counsel  
Livingston Law Firm  
5701 Perrin Road  
Fairview Heights, IL 62208

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**Work Plan for Sales of Facility Assets -Copper Furnace Cleanup Solids**  
**March 27, 2008**  
**Revised September 16, 2008**

Page 1 of 3

**Facility Asset: Copper Furnace Cleanup Solids**

**Purpose:**

The purpose of this Work Plan is to document the handling, packaging and shipping of approximately 300 metric tons of Copper Furnace Cleanup Solids to purchasers approved by the U.S. Bankruptcy Court, Southern District of Illinois (Bankruptcy Court).

**Purchasers:**

The Bankruptcy Estate of Chemetco, Inc. has agreements with the companies below to purchase Copper Furnace Cleanup Solids and recycle them to reclaim valuable non-ferrous metals (ex. copper, zinc, lead, tin, and nickel). This is verified in the attached NOTICE OF INTENT TO SELL PROPERTY documents issued by the Trustee on May 2, 2008, which became effective on May 23, 2008. The Estate has successfully sold Copper Furnace Cleanup Solids to two companies for recycling since 2001 (ex. Norddeutsche Affinerie AG Recycling and Coleman Engineering and Metals) and is not aware of any environmental or other issues of concern with the past sales of Copper Furnace Cleanup Solids. The companies are:

- Norddeutsche Affinerie A.G. Recycling – will recycle Copper Furnace Cleanup Solids at one or both of its non-ferrous smelters in Hamburg and Lunen, Germany.
- Colonial Metals Company – will recycle Copper Furnace Cleanup Solids at its non-ferrous smelter in Columbia, PA for production of a wide range of non-ferrous alloys for industry.

**Characterization of Material:**

Copper Furnace Cleanup Solids are a collection of furnace charges and melts, splatters, and spills around the furnaces of metal bearing materials generated by Chemetco's former secondary copper and lead/tin smelting processes. Copper Furnace Cleanup Solids exist in stockpiles in the SW corner, on the walls of the furnace support structures and around the Lead/Tin Shaker Ladel in the Foundry Building and in stockpiles outside the Foundry Building along the west side. These materials consist of a mix of copper, lead/tin, and iron scrap, fines, skimmings, drosses, and furnace emissions dust. The materials range in size from granular fines to scrap metal. Copper Furnace Cleanup Solids have a bulk density of approximately 1.35 MT/cy. Copper Furnace Cleanup Solids have significant levels of economically viable non-ferrous metals as metals and metal oxides (copper 20-50% by weight, zinc 10-15%, lead 5-10% and tin 2-5%). Iron metal scrap and compounds, 4-6%, are the largest non-ferrous constituents.

**Environmental Regulatory Classification:**

**RCRA:** Copper Furnace Cleanup Solids will be removed from stockpiles, loaded, and secured for shipment using procedures consistent with handling RCRA hazardous wastes. Copper Furnace Cleanup Solids will be shipped as a recycled product, not as a waste.

**Transportation Regulatory Classification:**

**USDOT:** Determination to be made based on the following criteria:

**Shipment by ocean vessel:** USDOT Hazardous Substance, 'Environmentally Hazardous Substance, Solid, N.O.S. (Copper Furnace Cleanup Solids-copper slag solids)', Class 9, UN3077, Group III. [Note: Classification triggered by IMDG marine pollutant limit for presence of soluble lead, applicable only to shipments destined to be transferred to ocean vessels.]

**Shipment other than by vessel:** NOT a USDOT Hazardous Substance.

**Shipping Container Criteria:**

**International Shipment Container:**

Copper Furnace Cleanup Solids will be shipped to international purchasers in 20-foot, sealed-door, sift-proof, dry ocean/freight containers in accordance with USDOT and IMO requirements.

**Domestic Shipment Container:**

Copper Furnace Cleanup Solids will be shipped to domestic purchasers in open top trailers with secured tarp covers in accordance with transportation and environmental regulations for shipment of slag.

**Loading Shipping Containers:**

**Ocean/Freight Container (International):** The ocean/freight container (container) will be parked at the west entrance to the Foundry Building but will not enter the building. Loading will be performed using a skid-steer loader or similar equipment to transport fines and smaller pieces of Copper Furnace Cleanup Solids up a portable metal ramp into the plastic lined container with sealed doors. A small heavy-lift forklift or similar equipment will transport pieces too large and heavy for the skid-steer loader and place them strategically inside the container to maintain an even distribution of weight across the container. A front-end loader or similar equipment will be used to position Copper Furnace Cleanup Solids in the stockpiles for loading by the skid-steer loader and/or forklift. Upon completion of loading, plastic is overlapped and taped down and a bulk-head placed across the doorway.

**"Dump Trailer (Domestic):** For domestic shipments, open top trailers would be loaded using a front end loader, Gradall, and/or a heavy-lift forklift (for large Copper Furnace Cleanup Solids). The trailer will be parked at the west entrance to the Foundry Building but will not enter the building [if it becomes necessary to load the trailer inside the Foundry Building, the trailer will be decontaminated upon exiting the building.]. Upon completion of loading, the end of the workday, or during precipitation, the trailer is covered and secured for shipment."

**Schedule**

Work is expected to be conducted from 7AM to 6PM, Monday-Friday but the Estate reserves the right to adjust the work schedule to accommodate shipping schedules. Depending on purchaser requirements, the schedule of the Furnace Removal Project, and weather conditions, shipments of Copper Furnace Cleanup Solids could start within 60 days and are expected to take 3 to 4 months to complete.

**Pollution Prevention**

**Decontamination:** All equipment, tools and the exterior of containers exiting the Work Area will be decontaminated per the Estate's Decontamination Procedure, dated January 29, 2008. All decontamination residues will be managed according to RCRA. Tires on wheeled vehicles will be washed before going off-site.

**Spills and Release Cleanup:** "Any spills or releases of Copper Furnace Cleanup Solids inside or outside the Foundry Building will be cleaned up each day using brooms, shovels or vacuum systems. Spills inside the Foundry Building will be cleaned down to grade of the Foundry Building floor. A determination will be made as to whether the materials cleaned up can be shipped or will be containerized and handled as Wastes according to RCRA."

**Commingled Waste:** Spills that create commingled waste with previously existing waste will be cleaned up each day using brooms, shovels, vacuum systems, or other appropriate methods. A determination will be made as to whether the materials cleaned up can be shipped or will be containerized and handled as Wastes according to RCRA.

**Containment:** All sealed containers of Wastes, including Hazardous Waste, awaiting shipment will be temporarily stored on plastic in an isolated area inside the west end of the Tank House and will be managed according to RCRA.

*Fugitive Dust:* Water spray and/or misters will be used to control fugitive dust but limited in volume to prevent run-off and unsafe working conditions.

#### **Waste Management**

*Hazardous Waste:* Copper Furnace Cleanup Solids will be removed from stockpiles, loaded, and secured for shipment using procedures consistent with handling RCRA hazardous wastes. The Estate expects to generate less than 0.5 MT of spill cleanup, debris (paper, plastic, cardboard, and wood), and contaminated PPE and filter elements. All wastes will be properly characterized, contained, labeled, handled, stored and manifested according to RCRA.

*Non-Hazardous Waste:* The Estate expects to generate less than 50 MT of scrap metal for sale but any wastes generated will be properly characterized and disposed off-site in accordance with RCRA. All scrap metal will be decontaminated prior to shipping off-site.

#### **Health & Safety**

*Hazards:* Copper Furnace Cleanup Solids contains hazardous levels of non-ferrous metals and inorganic metal compounds, such as lead, as referred to in the Estate's MSDS for Copper Furnace Cleanup Solids. When dry, Copper Furnace Cleanup Solids is dusty. Work around moving equipment is a safety hazard.

*Compliance:* The Estate requires that all workers inside the Foundry Building and in contact with Copper Furnace Cleanup Solids are required to comply with OSHA regulations for exposure to lead, cadmium and nickel, including wearing protective equipment such as hard hats, safety glasses or goggles, gloves, long sleeve shirt and long pants, boots, and respirator and are medically monitored for lead and cadmium exposure. All workers are also required to have current 40-hr HAZWOPER training certification.

#### **Security**

The Estate will provide 24-hr security monitoring of the site utilizing Estate personnel on work days, Monday thru Friday, and the use of its 24-hr security camera monitoring system. All work will be conducted during daylight hours, Monday thru Friday, or when Estate personnel are present for specially scheduled work on the weekends or holidays.

#### **Closure**

Upon completion of all work, the Estate will issue a Closure Report for this Work Plan with documentation on all shipments off-site including Copper Furnace Cleanup Solids and Wastes.

#### **ADDITIONAL CONDITIONS**

1. All sales shall comply with 35 Ill. Adm. Code 721.102 and 721.106.
2. Sales in excess of the specific amounts designated in the Notice of Intent must satisfy the requirements of that notice.
3. The Trustee shall contact the Manager Illinois EPA Bureau of Land, Collinsville regional Office 5 business days in advance of loading the initial loads

**Work Plan for Sales of Facility Assets -Cupro**

**March 27, 2008**

**Revised September 16, 2008**

Page 1 of 3

**AG Revisions**

**Facility Asset: Cupro (copper slag solids)**

**Purpose:**

The purpose of this Work Plan is to document the handling, packaging, and shipping of approximately 3000 metric tons of Cupro, a facility asset, to purchasers approved by the U.S. Bankruptcy Court, Southern District of Illinois (Bankruptcy Court).

**Purchasers:**

The Bankruptcy Estate of Chemetco, Inc. has an agreement with the company below to purchase Cupro and recycle it to reclaim valuable non-ferrous metals (ex. copper, zinc, lead, tin, and nickel). This is verified in the attached NOTICE OF INTENT TO SELL PROPERTY document issued by the Trustee on May 2, 2008, which became effective on May 23, 2008. The Estate has successfully sold Cupro to numerous companies for recycling since 2001 (Norddeutsche Affinerie NA, Coleman Engineering and Metals, and Wall Street Recycling) and is not aware of any environmental or other issues of concern with the past sales of Cupro. The company is:

- Norddeutsche Affinerie A.G. Recycling – will recycle Cupro at one or both of its non-ferrous smelters in Hamburg and Lunen, Germany.

**Characterization of Material and Location:**

Cupro is a metal bearing slag generated by Chemetco's former secondary copper smelting process. Cupro exists mainly in a stockpile inside the NW corner of the Foundry Building and outside in a bunker in sizes that includes fines (< 20%), a range of bulk material up to approximately 2 feet in diameter (~ 65%), and large pieces up to approximately 5 feet in diameter (~15%). Cupro is very heavy, ~ 2 MT/cy. Cupro has significant levels of economically viable non-ferrous metals as metals and metal oxides: copper 20-35% by weight, nickel 5-15%, lead 4-15%, tin 3-15%, and zinc 3-6%. Silica dioxide, 10-12%, (amorphous) is the largest non-metal compound. The attached MSDS-Cupro (copper slag solids) contains additional information.

**Environmental Regulatory Classification:**

**RCRA:** Cupro will be removed from stockpiles, loaded, and secured for shipment using procedures consistent with handling RCRA hazardous wastes. Cupro will be shipped as a recycled product, not as a waste.

**Transportation Regulatory Classification:**

**USDOT:** Determination to be made based on the following criteria:

**Shipment by ocean vessel:** USDOT Hazardous Substance, 'Environmentally Hazardous Substance, Solid, N.O.S. (Cupro-copper slag solids)', Class 9, UN3077, Group III. [Note: Classification triggered by IMDG marine pollutant limit for presence of soluble lead, applicable only to shipments destined to be transferred to ocean vessels.]

**Shipment other than by vessel:** NOT a USDOT Hazardous Substance.



**IMDG:** The International Maritime Organization (IMO) Dangerous Goods (IMDG) requirements classifies Cupro shipped on ocean vessels as:

'Environmentally Hazardous Substance, Solid, N.O.S. (Cupro-copper slag solids)', Class 9, UN3077, Group III.

**Shipping Container Criteria:**

**International Shipment Container:**

Cupro will be shipped to international purchasers in 20-foot, sealed-door, sift-proof, dry ocean/freight containers in accordance with USDOT and IMO requirements.

**Domestic Shipment Container:**

Cupro will be shipped to domestic purchasers in open top trailers with secured tarp covers in accordance with transportation and environmental regulations for shipment of slag.

**Loading Shipping Containers:**

**Ocean/Freight Container (International):** The ocean/freight container (container) will be parked at the west entrance to the Foundry Building but will not enter the building. Loading will be performed using a skid-steer loader or similar equipment to transport fines and smaller pieces of Cupro up a portable metal ramp into the plastic lined container with sealed doors. A small heavy-lift forklift or similar equipment will transport pieces too large and heavy for the skid-steer loader and place them strategically inside the container to maintain an even distribution of weight across the container. A front-end loader or similar equipment will be used to position Cupro in the stockpiles for loading by the skid-steer loader and/or forklift to insure that the stockpiles do not become unstable as Cupro is removed from the base. Upon completion of loading, plastic is overlapped and taped down and a bulk-head placed across the doorway.

**"Dump Trailer (Domestic):** For domestic shipments, open top trailers would be loaded using a front end loader, Gradall, and/or a heavy-lift forklift (for large Cupro). The trailer will be parked at the west entrance to the Foundry Building but will not enter the building [If it becomes necessary to load the trailer inside the Foundry Building, the trailer will be decontaminated upon exiting the building.]. Upon completion of loading, the end of the workday, or during precipitation, the trailer is covered and secured for shipment."

**Schedule**

Work is expected to be conducted from 7AM to 6PM, Monday-Friday but the Estate reserves the right to adjust the work schedule to accommodate shipping schedules. Depending on purchaser requirements, shipments of Cupro are expected to start within 2 months and take 6 to 9 months to complete.

**Pollution Prevention**

**Decontamination:** All equipment, tools, and exterior of containers and packages exiting the Foundry Building will be required to be decontaminated per the Estate's Decontamination Procedure dated January 29, 2008. Upon exiting the Foundry Building, all personnel will have to remove PPE and properly dispose of it upon, decontaminate any non-disposal items (e.g., footwear, hard hats, and respirators), shower and change clothing before exiting the site. All decontamination residues will be managed according to RCRA. Tires on wheeled vehicles will be washed before going off-site.

**Spills and Release Cleanup:** "Any spills or releases of Cupro inside or outside the Foundry Building will be cleaned up each day using brooms, shovels or vacuum systems. Spills inside the Foundry Building will be cleaned down to grade of the Foundry Building floor. A determination will be made as to whether the materials cleaned up can be shipped or will be containerized and handled as Wastes according to RCRA."

**Commingled Waste:** Spills that create commingled waste with previously existing waste will be cleaned up each day using brooms, shovels, vacuum systems, or other appropriate methods. A determination will be made as to whether the materials cleaned up can be shipped or will be containerized and handled as Wastes according to RCRA.

**Containment:** All sealed containers of Wastes, including Hazardous Waste, awaiting shipment will be temporarily stored on plastic in an isolated area inside the west end of the Tank House and will be managed according to RCRA.

**Fugitive Dust:** Water spray and/or misters will be used to control fugitive dust but limited in volume to prevent run-off.

#### **Waste Management**

**Hazardous Waste:** Cupro will be removed from stockpiles, loaded, and secured for shipment using procedures consistent with handling RCRA hazardous wastes. The Estate expects to generate less than 1 MT of hazardous waste as spill cleanup, debris (e.g., paper, plastic, cardboard, and wood), and contaminated PPE and filter elements. All wastes will be properly characterized, contained, labeled, handled, stored and manifested according to RCRA.

**Non-Hazardous Waste:** The Estate does not expect to generate any non-hazardous waste. If any non-hazardous waste is generated, it will be properly characterized, handled and disposed in accordance with RCRA.

#### **Health & Safety**

**Hazards:** Cupro contains hazardous levels of non-ferrous metals and inorganic metal compounds, such as lead and nickel, as referred to in the Estate's MSDS-Cupro (copper slag solids), attached. Additionally, the Foundry Building has hazardous levels of cadmium. Exposure to mineral dust is a concern due to the level of fines, < 20%, and respirable dusts, < 1%, containing amorphous silica. Work around heavy and moving equipment is a safety hazard.

**Compliance:** The Estate requires that all workers inside the Foundry Building and in contact with Cupro are required to comply with OSHA regulations for exposure to lead, cadmium and nickel, including wearing protective equipment such as hard hats, safety glasses or goggles, gloves, long sleeve shirt and long pants, boots, and respirator and are medically monitored for lead and cadmium exposure. All workers are also required to have current 40-hr HAZWOPER training certification.

#### **Security**

The Estate will provide 24-hr security monitoring of the site utilizing Estate personnel on work days, Monday thru Friday, and the use of its 24-hr security camera monitoring system during non-working hours. All work will be conducted during daylight hours, Monday thru Friday, or when Estate personnel are present for specially scheduled work on the weekends or holidays.

#### **Closure**

Upon completion of all work, the Estate will issue a Closure Report for this Work Plan with documentation on all shipments of Cupro off-site including Wastes.

#### **ADDITIONAL CONDITIONS**

1. All sales shall comply with 35 Ill. Adm. Code 721.102 and 721.106.
2. Sales in excess of the specific amounts designated in the Notice of Intent must satisfy the requirements of that notice.
3. The Trustee shall contact the Manager Illinois EPA Bureau of Land, Collinsville regional Office 5 business days in advance of loading the initial loads

**Work Plan for Sales of Facility Assets -Pot Slag**

**March 27, 2008**

**Revised September 16, 2008**

Page 1 of 3

**Facility Asset: Pot Slag (copper refining slag)**

**Purpose:**

The purpose of this Work Plan is to document the handling, packaging and shipping of approximately 300 metric tons of Pot Slag to purchasers approved by the U.S. Bankruptcy Court, Southern District of Illinois (Bankruptcy Court).

**Purchasers:**

The Bankruptcy Estate of Chemetco, Inc. has agreements with the companies below to purchase Pot Slag and recycle it to reclaim valuable non-ferrous metals (ex. copper, zinc, lead, tin, and nickel). This is verified in the attached NOTICE OF INTENT TO SELL PROPERTY documents issued by the Trustee on May 2, 2008, which became effective on May 23, 2008. The Estate has successfully sold Pot Slag to two companies for recycling since 2001 (Coleman Engineering and Metals and Minkin-Chandler Corp/Lakeside Scrap Metal) and is not aware of any environmental or other issues of concern with the past sales of Pot slag. The companies are:

- Norddeutsche Affinerie A.G. Recycling – will recycle Pot Slag at one or both of its non-ferrous smelters in Hamburg and Lünen, Germany.
- Colonial Metals Company – will recycle Pot Slag at its non-ferrous smelter in Columbia, PA where they produce a wide variety of non-ferrous alloys for industry.

**Characterization of Material:**

Pot Slag is a metal bearing copper refining slag generated by Chemetco's former secondary copper smelting process. Pot Slag exists in a stockpile inside the NE corner and outside the NW corner of the Foundry Building. Pot Slag exists in sizes that range from skulls to granular material. Pot Slag is very heavy, ~ 1.85 MT/cy. Pot Slag has significant levels of economically viable non-ferrous metals as metal oxides: copper 20-40% by weight, zinc 5-15%, lead 5-15%, tin 5-15%, and nickel 3-6%. Silica dioxide, 25-35%, (amorphous) is the largest non-metal compound. The MSDS-Pot Slag (copper refining slag) contains additional information.

**Environmental Regulatory Classification:**

**RCRA:** Pot slag will be removed from stockpiles, loaded, and secured for shipment using procedures consistent with handling a RCRA hazardous waste. Pot slag will be shipped as a recycled product.

**Transportation Regulatory Classification:**

**USDOT:** Determination to be made based on the following criteria:

**Shipment by ocean vessel:** USDOT Hazardous Substance, 'Environmentally Hazardous Substance, Solid, N.O.S. (Pot slag-copper refining slag)', Class 9, UN3077, Group III. [Note: Classification triggered by IMDG marine pollutant limit for presence of soluble lead, applicable only to shipments destined to be transferred to ocean vessels.]

**Shipment other than by vessel:** NOT a USDOT Hazardous Substance.

**IMDG:** The International Maritime Organization (IMO) Dangerous Goods (IMDG) requirements classifies Pot slag shipped on ocean vessels as:

'Environmentally Hazardous Substance, Solid, N.O.S. (Pot slag-copper refining slag)', Class 9, UN3077, Group III.

**Shipping Container Criteria:**

**International Shipment Container:**

Pot slag will be shipped to international purchasers in 20-foot, sealed-door, sift-proof, dry ocean/freight containers in accordance with USDOT and IMO requirements.

**Domestic Shipment Container:**

Pot slag will be shipped to domestic purchasers in open top trailers with secured tarp covers in accordance with transportation and environmental regulations for shipment of slag.

**Loading Shipping Containers:**

**Ocean/Freight Container (International):** The ocean/freight container (container) will be parked at the west entrance to the Foundry Building but will not enter the building. Loading will be performed using a skid-steer loader or similar equipment to transport fines and smaller pieces of Pot slag up a portable metal ramp into the plastic lined container with sealed doors. A small heavy-lift forklift or similar equipment will transport pieces too large and heavy for the skid-steer loader and place them strategically inside the container to maintain an even distribution of weight across the container. A front-end loader or similar equipment will be used to position Pot slag in the stockpiles for loading by the skid-steer loader and/or forklift to insure that the stockpiles do not become unstable as Pot slag is removed from the base. Upon completion of loading, plastic is overlapped and taped down and a bulk-head placed across the doorway.

**"Dump Trailer (Domestic):** For domestic shipments, open top trailers would be loaded using a front end loader, Gradall, and/or a heavy-lift forklift (for large Pot slag). The trailer will be parked at the west entrance to the Foundry Building but will not enter the building [If it becomes necessary to load the trailer inside the Foundry Building, the trailer will be decontaminated upon exiting the building.]. Upon completion of loading, the end of the workday, or during precipitation, the trailer is covered and secured for shipment."

**Schedule**

Work is expected to be conducted from 7AM to 6PM, Monday-Friday but the Estate reserves the right to adjust the work schedule to accommodate shipping schedules. Depending on purchaser requirements, shipments of Pot Slag are expected to start within 2 months and take 4 to 6 months to complete.

**Pollution Prevention**

**Decontamination:** All equipment, tools, and the exterior of their containers exiting the Work Area will be decontaminated per the Estate's Decontamination Procedure dated January 29, 2008. Upon exiting the Foundry Building, all personnel will have to remove PPE and properly dispose of it upon, decontaminate any non-disposal items (e.g., footwear, hard hats, and respirators), shower and change clothing before exiting the site. All decontamination residues will be managed according to RCRA. Tires on wheeled vehicles will be washed before going off-site.

**Spills and Release Cleanup:** "Any spills or releases of Pot Slag outside the Foundry Building will be cleaned up each day using brooms, shovels or vacuum systems. Spills inside the Foundry Building will be cleaned down to grade of the Foundry Building floor. A determination will be made as to whether the materials cleaned up can be shipped or will be containerized and handled as Wastes according to RCRA."

**Commingled Waste:** Spills that create commingled waste with previously existing waste will be cleaned up each day using brooms, shovels, vacuum systems, or other appropriate methods. A determination will be made as to whether the materials cleaned up can be shipped or will be containerized and handled as Wastes according to RCRA.

**Containment:** All sealed containers of Wastes, including Hazardous Waste, awaiting shipment will be temporarily stored on plastic in an isolated area inside the west end of the Tank House and will be managed according to RCRA.

**Fugitive Dust:** Water spray and/or misters will be used to control fugitive dust but limited in volume to prevent run-off.

### Waste Management

**Hazardous Waste:** Pot Slag will be removed from stockpiles, loaded, and secured for shipment consistent with a RCRA hazardous waste. The Estate expects to generate less than 500 lbs of hazardous waste as spill cleanup, debris (paper, plastic, cardboard, and wood), and contaminated PPE and filter elements. All wastes will be properly characterized, contained, labeled, handled, stored and manifested according to RCRA.

**Non-Hazardous Waste:** The Estate does not expect to generate any non-hazardous waste. If any non-hazardous waste is generated, it will be properly characterized, handled and disposed in accordance with RCRA.

### Health & Safety

**Hazards:** Pot Slag contains hazardous levels of non-ferrous metals and inorganic metal compounds, such as lead and nickel, as referred to in the Estate's MSDS-Pot Slag (copper refining slag), attached. Exposure to mineral dust is a concern due to the level of fines, <10%, and respirable dusts, < 1%, present as Pot Slag. Work around heavy and moving equipment is a safety hazard.

**Compliance:** The Estate requires that all workers inside the Foundry Building and in contact with Pot Slag are required to comply with OSHA regulations for exposure to lead, cadmium and nickel, including wearing protective equipment such as hard hats, safety glasses or goggles, gloves, long sleeve shirt and long pants, boots, and respirator and are medically monitored for lead and cadmium exposure. All workers are also required to have current 40-hr HAZWOPER training certification.

### Security

The Estate will provide 24-hr security monitoring of the site utilizing Estate personnel on work days, Monday thru Friday, and the use of its 24-hr security camera monitoring system. All work will be conducted during daylight hours, Monday thru Friday, or when Estate personnel are present for specially scheduled work on the weekends or holidays.

### Closure

Upon completion of all work, the Estate will issue a Closure Report for this Work Plan with documentation on all shipments off-site including Pot Slag and Wastes.

### ADDITIONAL CONDITIONS

1. All sales shall comply with 35 Ill. Adm. Code 721.102 and 721.106.
2. Sales in excess of the specific amounts designated in the Notice of Intent must satisfy the requirements of that notice.
3. The Trustee shall contact the Manager Illinois EPA Bureau of Land, Collinsville regional Office 5 business days in advance of loading the initial loads

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
and PEOPLE OF THE STATE OF	)	
ILLINOIS, <i>ex rel.</i> LISA MADIGAN,	)	
ATTORNEY GENERAL OF THE STATE	)	
OF ILLINOIS,	)	
Plaintiffs,	)	
v.	)	Civil Nos. 00-670-DRH,
	)	00-677-DRH (consolidated)
CHEMETCO, INC.,	)	CJRA Track C
	)	Hon. David R. Herndon
Defendant.	)	U.S. District Judge

ILLINOIS MOTION TO REFILE APPENDICES TO INTERIM ORDER

The Plaintiff, People of the State of Illinois, *ex rel.*, Lisa Madigan, Attorney General of the State of Illinois, moves for leave to refile appendices inadvertently filed under the case number 00-677.

Wherefore, the Plaintiff, People of the State of Illinois, *ex rel.*, Lisa Madigan, Attorney General of the State of Illinois, requests that the subpoena be quashed as to the identified documents.

THE PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN  
Attorney General  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement

BY: /s/ James L. Morgan, AAG  
James L. Morgan  
Environmental Bureau  
Assistant Attorney General  
500 S. Second Street  
Springfield, IL 62706  
217-524-7506

Dated: September 16, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that on September 16, 2008, I electronically filed the foregoing Motion to Refile Appendices to Interim Order with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record in this cause.

/s/ James L. Morgan  
James L. Morgan  
Environmental Bureau  
Assistant Attorney General  
500 S. Second Street  
Springfield, IL 62706  
217-524-7506  
jmorgan@atg.state.il.us

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. )  
)  
CHEMETCO, INC., )  
)  
Defendant. )

Civil Nos. 00-670-DRH  
00-677-DRH (consolidated)  
CJRA Track C  
Hon. David R. Herndon  
U.S. District Judge

PEOPLE OF THE STATE OF )  
ILLINOIS, *ex rel.* LISA MADIGAN, )  
ATTORNEY GENERAL OF THE )  
STATE OF ILLINOIS, )  
)  
Plaintiff )

)Hon. David R. Herndon CJRA Track C

v. )  
)  
CHEMETCO, INC., )  
)  
Defendant. )

APPENDIX A: (ARARs SOURCE LIST)

ARARs governing the specified activities will be drawn from the following sources. Additional ARARs may be identified as plans are developed and the parties review implementation of the Work under the Consent Decree.

1) MATERIAL HANDLING

- Sections 9, 12, and 21 of the Environmental Protection Act, 415 ILCS 5/9, 12, and 21.
- 35 Ill. Adm. Code Part 722, Subparts A-E.
- 35 Ill. Adm. Code Part 724, Subparts A-D and 724.170, 724.173(a), (b)(2)-(6), (8)-(10), (12), (14), and (16).
- 35 Ill. Adm. Code Part 212, Subparts B (Visible Emissions), K (Fugitive



Particulate Emissions), L (Particulate Emissions), and U (Contingency Plan).

- 35 Ill. Adm. Code Part 309, Subpart B (On-site wastewater treatment)
- Stormwater Management

**2) PRODUCT DISPOSITION**

- 35 Ill. Adm. Code Part 726, Subpart C (Recyclable Materials Used in a Manner Constituting Disposal), and Subpart F (Recyclable Materials Utilized for Precious Metal Recovery).
- 35 Ill. Adm. Code Part 721, Subpart A.

**3) UNIT CONSTRUCTION, OPERATION, AND CLOSURE/POST-CLOSURE**

- 35 Ill. Adm. Code Part 724, Subparts F-L.

**4) UNIT CONSTRUCTION, OPERATION, AND CLOSURE/POST-CLOSURE  
(WAM Handling and Storage)**

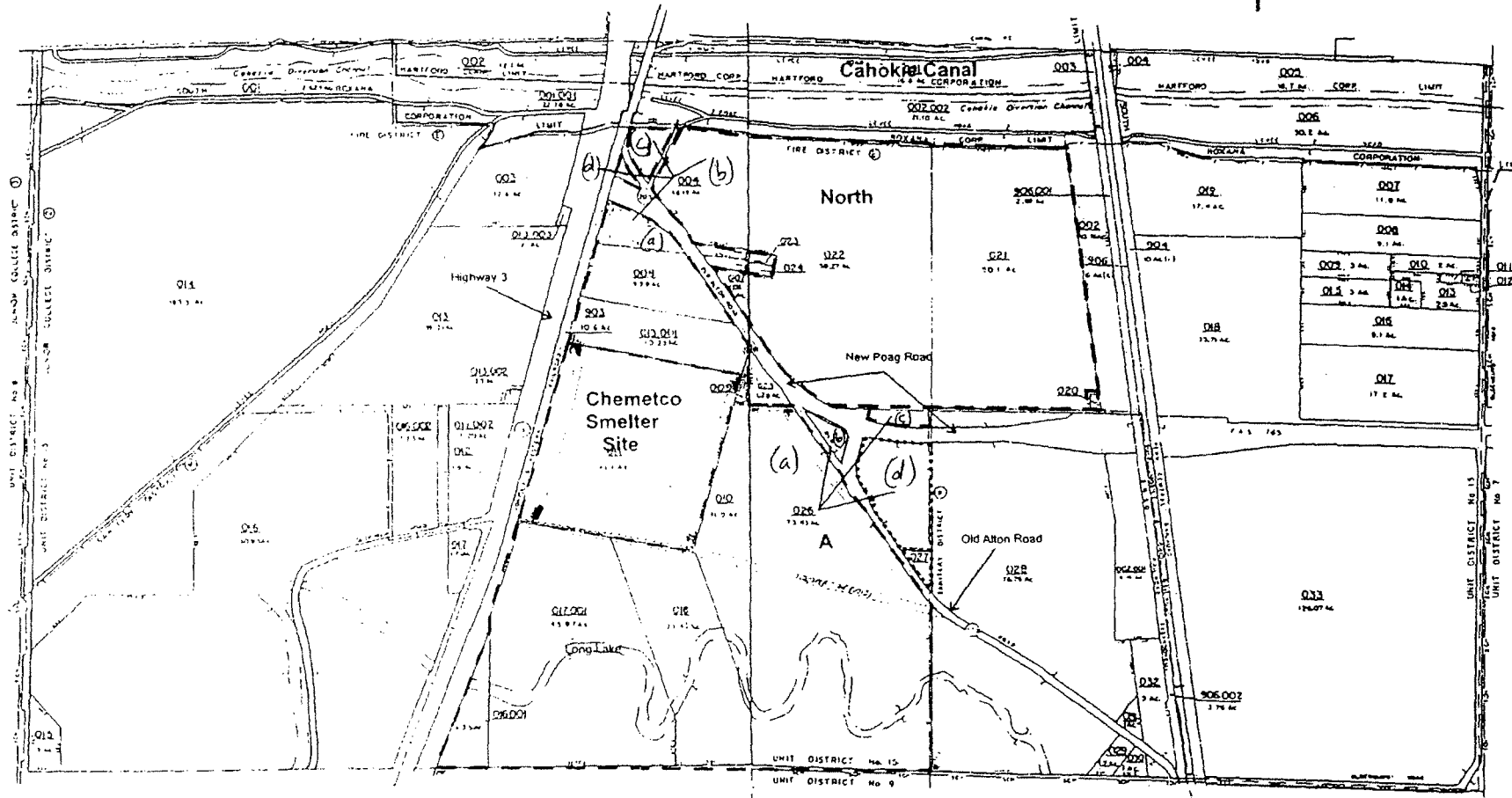
- 35 Ill. Adm. Code Part 724, Subparts F-L and N.

**5) MANAGEMENT OF SOURCES OF WAM**

- Sections 9, 12, and 21 of the Environmental Protection Act, 415 ILCS 5/9, 12, and 21.
- 35 Ill. Adm. Code Part 724, Subparts A-D and 724.170, 724.173(a), (b)(2)-(6), (8)-(10), (12), (14), and (16).
- 35 Ill. Adm. Code Part 212, Subparts B (Visible Emissions), K (Fugitive Particulate Emissions), L (Particulate Emissions), and U (Contingency Plan).
- Stormwater Management

# APPENDIX B (7/18/08) Estate of Chemetco, Inc. Property Map

- indicates property boundary
- indicates Seal Order boundary
- indicates Smelter site



## **Appendix D**

### **Exclusions to Facility Assets**

#### **Equipment, Spare Parts, and Supplies**

The following equipment, spare parts, and supplies are excluded from the definition of Facility Assets in the Interim Order:

##### **Equipment:**

Lab Bldg

- Laboratory Equipment

Brick Shop

- Pilot Plants

Offices

- All office furniture and equipment are excluded

##### **Spare Parts and Supplies**

All store room inventory spare parts and supplies are excluded